

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELLE ROSADO,

Plaintiff,

-against-

ROBERT NICHOLS, et al.,

Defendants.

USDC SDNY
DOCUMENT
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DATE FILED: 3/4/2021

7:17-CV-00360 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Michelle Rosado (“Plaintiff”), commenced this action against Defendants on or about January 18, 2017, (ECF No. 2.) By Order to Show Cause (“OSC”), dated February 12, 2021, the Court directed Plaintiff to show cause on or before February 26, 2021, why the action should not be dismissed with prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b)”). To date, Plaintiff has not responded.

Since the inception of this litigation, Plaintiff has done very little to prosecute the action, has been uncommunicative with Defendants and the Court, has failed to engage in discovery, and has failed to respond to the Court’s OSC. Further, on February 10, 2021, Plaintiff filed motions requesting to withdraw this action. (ECF No. 145-147.)

When determining whether to dismiss an action pursuant to Rule 41(b), courts have considered whether: (1) plaintiff’s failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff’s right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions. *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004) (internal citations omitted). No one factor is determinative. *Id.* (citing *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993)). Having

considered the relevant factors, the Court determines that dismissal of the action is warranted. Plaintiff's delays during the discovery process have been significant in duration (approximately eighteen months) and Plaintiff has affirmatively moved to dismiss the action. Accordingly, it is hereby Ordered that the action is DISMISSED with prejudice for failure to prosecute.

The Clerk of the Court is respectfully directed to terminate the action and serve a copy of this Order upon the Plaintiff at her last known residence, and to show proof on the docket.

Dated: March 4, 2021
White Plains, New York

SO ORDERED:

A handwritten signature in blue ink, appearing to read 'Nelson S. Román', is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge